

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ANNE MARIE MARCHI,

Plaintiff,

v.

**HUDSON CITY SAVINGS BANK, A
SUBSIDIARY OF HUDSON CITY
BANCORP., INC.,**

Defendant

Civ. No. 15-cv-5725 (KM)

MEMORANDUM and ORDER

Defendant has filed a motion to dismiss the complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim (ECF no. 4). Plaintiff has filed a response (ECF no. 5), but the response states only that Defendant's motion should be struck as untimely pursuant to Fed. R. Civ. P. 12(f). Plaintiff requests 20 days to respond to any portion of the motion that is not struck.

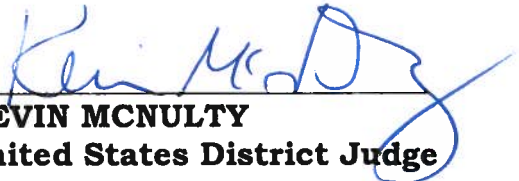
The motion to dismiss was not filed late. The time to answer or otherwise move in response to a complaint is within 21 days after service. *See* Fed. R. Civ. P. 12(a)(1), 12(b). The complaint was filed July 23, 2015. Plaintiff mailed the complaint to defendant on August 3, 2015 (plaintiff's return of service, ECF no. 3). I set aside any issues of adequacy of service, because defendant does not raise it. *See* Fed. R. Civ. P. 12(b). In cases where mailing is sufficient, 3 days are added to the party's time to respond. Fed. R. Civ. P. 26(c). Defendant's answer or motion in response to the complaint was therefore due by August 27, 2015. This motion to dismiss was filed on August 25, 2015.

This *pro se* plaintiff is presumably unfamiliar with the procedures of the Court. I therefore must express the following warning to both sides: It is for the Court, not an opposing party, to decide that a motion is late and need not be answered. A party who chooses not to respond to a motion, believing it is

late, ordinarily takes the risk that the court will disagree, or that the court will excuse the lateness. This time, I will permit the plaintiff to file a response within 20 days. Next time, I may not.

IT IS THEREFORE, this 29th day of February, 2016,

ORDERED that plaintiff may, on or before March 21, 2016, file a response to the defendant's motion to dismiss.


KEVIN MCNULTY
United States District Judge